Held, the bank could not become a partner and could not incur a partnership liability; but the transfer of the shares made the bank a part owner in severalty of the property of the firm and as such liable for its share of the debts of the syndicate. *Merchants' National Bank* v. *Wehrman* et al. (1903),—Ohio, —68 N. E. Rep. 1004.

National banks can lawfully exercise only those powers which are expressly granted or which are incidental to the business of such banks. *Logan County Bank* v. *Townsend*, 139 U. S. 67, 73; *California Bank* v. *Kennedy*, 167 U. S. 362. The power to become a partner is not expressly granted and the principal case holds that such a power is in no sense incidental to the business of national banks. Though national banks may not lawfully take and hold shares in a corporation as an investment, yet they may accept such stock as collateral to secure a debt. The bank may in this way become the owner of such stock and liable the same as any other stockholder. *California Bank* v. *Kennedy*, *supra*, *National Bank* v. *Case*, 99 U. S. 628. While the principal case does not go so far as to hold the bank jointly liable, it seems to be in harmony with the principle of the foregoing cases in holding it to some degree of liability. Yet it is probable that some courts would hold the bank liable as a partner. *Catskill Bank* v. *Gray*, 14 Barb. 471; *Allen* v. *Woonsocket Co.* 11 R. I. 288; *Bushnell* v. *Chautauqua County Nat. Bank*, 10 Hun, (N. Y.) 378.

PLEADING—INCONSISTENT DEFENSES UNDER THE CODE,—In an action for the price of windmills defendant pleaded (1) a general denial, (2) rescission of the contract, (3) a counter claim for breach of warranty, (4) damages for false representations in the sale, and (5) by an amendment, that he bought the mills as an agent. *Held*, that under the Iowa code these defenses were admissible. *Cole* v. *Laird* (1903)—Ia.—, 96 N. W. Rep. 744.

The Iowa Code, 1897, §3620, provides that "Inconsistent defenses may be stated in the same answer or reply, and when a verification is required, it must be to the effect that the party believes one or the other to be true, but cannot determine which." The Kentucky Code, 1895, § 113, provides that inconsistent defenses may not be pleaded, but adds that "a party may allege, alternatively, the existence of one or another fact, if he state that one of them is true, and that he does not know which of them is true." In the absence of such express provision there is an irreconcilable conflict among the code states. Mr. Pomeroy, in his work on CODE REMEDIES, § 722, seems to favor inconsistent defenses, while other code authors are opposed to them on principle. MAXWELL CODE PL., p. 397; BLISS CODE PL., § 343. The following decisions sanction inconsistent defenses: *Banta* v. *Siller*, 121 Cal. 414, 53 Pac. 935; *Hill* v. *Groesbeck*, 29 Colo, 161, 67 Pac. 167; *Weston* v. *Lumley*, 33 Ind. 486; *De Lissa* v. *Coal Co.*, 59 Kan. 319, 52 Pac. 886; *Society Italiana* v. *Sulzer*, 138 N. Y. 468, 34 N. E, 193; *Seeman* v. *Bandler*, 54 N. Y. S. 564, 25 Misc. 328; *McLamb* v. *McPhail*, 126 N. C. 218, 35 S. E. 426; *Millan* v. *R. R. Co.*, 54 S. C. 485, 32 S. E. 539; *Green* v. *Hughitt Tp.*, 5 S. Dak. 452, 59 N. W. 224. In the following inconsistent defenses are held not admissible: *Fernside* v. *Rood*, 73 Conn. 83, 46 Atl. 275: *Murphy* v. *Russell*, —Idaho—, 67 Pac. 421; *Steenerson* v. *Waterbury*, 52 Minn. 211, 53 N. W. 1146; *Oakes* v, *Zeimer*, 61 Neb. 6, 84 N. W. 409; *Insurance Co.* v. *Carnahan*, 63 Ohio St. 258, 58 N. E. 805; *Baines* v. *Coos Bay Co.* 41 Ore. 135, 68 Pac. 397; *Seattle Nat. Bank* v. *Carter*, 13 Wash. 281, 43 Pac. 331. It is generally held in the above decisions that two defenses are not inconsistent unless the proof of one disproves the other. In Ohio it is held there is no inconsistency if the defenses may be verified without perjury. *Insurance Co.* v. *Carnahan*, *supra*.